IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

CRL.A.No. 1023 of 2001(A)

ST.478/1998 of CHIEF JUDICIAL MAGISTRATE COURT, PALAKKAD
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APPELLANT: COMPLAINANT

M.GOPINATHAN, S/O. LATE
SETHUMADHAVAN,
AMRUTHAKRIPA, KOLAYAKKODE,
PUDUSSERY AMSOM, PALAKKAD

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.JYOTHI PRASAD

RESPONDENTS: ACCUSED & STATE
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1. A.SURESH, S/O.AYYAPPAN,
KRISHNA NIVAS, KONATH PARAMBU,
CHITTOOR ROAD, PALAKKAD.

2. STATE OF KERALA,
REP.BY THE PUBLIC PROSECUTOR,
KERALA HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.K.ANAND
PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.1023 of 2001(D)

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Dated this the 3rd day of August, 2007

J U D G M E N T

The appellant is the complainant, who had initiated proceedings against the respondent/accused with respect to the offence under Section 138 of the Negotiable Instruments Act on the allegation that the impugned cheque dated 20/10/1997 with respect to an amount of Rs.34,000/- was dishonoured for want of funds in the account of the accused and that the lawyer notice sent demanding payment was not replied to nor was the amount paid.

2. The evidence adduced in the matter consisted of the testimony of PW.1 and Exts.P1 to P5 and DW.1. The defence version is that an amount of Rs.9,000/- has been borrowed and out of which Rs.7,000/- was paid towards interest and that only a sum of Rs.9,000/- is due. The defence examined DW.1, the witness whose evidence was discarded by the court below as it was found that he was the employee of the accused. The court

below dismissed the complaint on the ground that it was admitted that there was a pronote on the basis of which the amount was allegedly borrowed by the accused and that the same was not produced. The handing over of the cheque with the signature of the accused has not been disputed. The contention of the accused is that an exorbitant amount has been incorporated in Ext.P1 and presented at the bank.

In the circumstances, I find that the matter requires reconsideration. The case is remitted back to the court below for fresh disposal after considering the evidence adduced by the parties and with liberty to adduce any further evidence if they so desire. The matter will stand posted before the court below on 05/09/2007.

Sd/-

K.R.UDAYABHANU,
Judge

ms

K.R.UDAYABHANU, J.

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Crl.A.No.1023 of 2001(D)

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J U D G M E N T

3rd August, 2007